CHAPTER XLVI.

MISCELLANEOUS.

Courts and persons before whom affidavits may be sworn.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the [1][Clerk of the State], or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in [2][India], or any Commissioner to administer oaths in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Affidavit in proof of conduct of public servant.

[3][**539A.** (*1*) When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

(*2*) Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

Authorities before whom affidavits may be sworn.

539AA. (*1*) An affidavit to be used before any Court other than a High Court under section 510A or section 539A may be sworn or affirmed in the manner prescribed in section 539 or before any Magistrate.

(*2*) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.]

Local inspection.

[4][**539B.** (*1*) Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(*2*) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost :

Provided that, in the case of a trial by jury [5]* , the Judge shall not act under this section unless such jury [6]* are also allowed a view under section 293.]

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[1] Substituted by the A. O. 1950 for "Clerk of the Crown".

[2] The words "British India" have successively been substituted by the A. O. 1948, A. O. 1950 and Act 1 of 1951 to read as above.

[3] Inserted by Act 26 of 1955, s. 107.

[4] Inserted by Act 18 of 1923, s. 105.

[5] The words "or with the aid of assessors" were omitted by Act 26 of 1955, s. 108 (*i*).

[6] The words "or assessors" were omitted, *ibid*, s. 108 (*ii*).

[1][**539C.** *Any Magistrate shall be entitled to attest, verify or authenticate documents brought before him for the purpose of attestation, verification or authentication, as the case may be, and to affix seals thereon, as may be prescribed by the Bombay Public Authorities Seals Act, 1883, or any other law for the time being in force.*] *Other powers of Magistrates.*

Bom. V of 1883.

[2][**539D.** *Any Justice of the Peace (not being a legal practitioner) shall be entitled to attest, verify or authenticate documents brought before him for the purpose of attestation, verification or authentication, as the case may be, and to affix such seal thereon as may be prescribed by the State Government by notification in the Official Gazette.* *Attestation, etc., of documents and use of seal by Justices of the Peace.*

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case. **Power to summon material witness or examine person present.**

[3][**540A.** [4][(*1*) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.] **Provision for inquiries and trial being held in the absence of accused in certain cases.**

(*2*) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.]

541. (*1*) Unless when otherwise provided by any law for the time being in force, the [5][6][State] Government] may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined. **Power to appoint place of imprisonment.**

(*2*) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a Civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail. **Removal to criminal jail of accused or convicted persons who are in confinement in civil jail and their return to the civil jail.**

(*3*) When a person is removed to a criminal jail under [7][sub-section (*2*)] he shall, on being released therefrom, be sent back to the civil jail,

[1] Inserted by Bom. 78 of 1948, s. 2.
[2] Inserted by Bom. 71 of 1954, s. 6.
[3] Inserted by Act 18 of 1923, s. 151.
[4] Inserted by Act 26 of 1955, s. 109.
[5] Substituted by the A. O. 1937 for "L. G".
[6] Substituted by the A. O. 1950 for "Provincial".
[7] Substituted by the Repealing and Amending Act, 1924 (7 of 1924), s. 2 and Sch. I, for "sub-section (*1*)".

unless either—

(*a*) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure[1]; or XIV of 1882.

(*b*) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure[1]. XIV of 1882.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

542. (*1*) Notwithstanding anything contained in the Prisoners' Testimony Act, 1869,[2] any Presidency Magistrate desirous of examining as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination. XV of 1869.

(*2*) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

Interpreter to be bound to interpret truthfully.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Expenses of complainants and witnesssss.

544. Subject to any rules made by the [3][[4]State] Government], [5]* * * * any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Power of Court to pay expenses or compensation out of fine.

545. (*1*) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or [6][a sentence (including a sentence of death) of which fine forms a part] the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(*a*) in defraying expenses properly incurred in the prosecution;

[7][(*b*) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;]

[8](*bb*) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855, entitled to recover damages from the person sentenced for the loss resulting to them from such death;] XIII of 1855.

[9][(*c*) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of,

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[1] *See* now the Code of Civil Procedure, 1908 (5 of 1908), s. 58 and the Provincial Insolvency Act, 1920 (5 of 1920), s. 27.

[2] *See* now the Prisoners Act, 1900 (3 of 1900).

[3] Substituted by the A. O. 1937 for "L. G.".

[4] Substituted by the A. O. 1950 for "Provincial".

[5] The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

[6] Substituted by Act 26 of 1955, s. 110 (*i*), for the original.

[7] Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 152, for the original cl. (*b*).

[8] Clause (*bb*) was inserted by Act 26 of 1955, s. 110 (*ii*).

[9] Inserted by Act 18 of 1923, s. 152.

stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser, of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.]

(*2*) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of, the appeal.

Payments to be taken into account in subsequent suit.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Order of payment of certain fees paid by complainant in non-cognizable cases.

[1][**546A.** (*1*) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may in addition to the penalty imposed upon him, order him to pay to the complainant—

(*a*) the fee (if any) paid on the petition of complaint or for the examination of the complainant, and

(*b*) any fees paid by the complainant for serving processes on his witnesses or on the accused,

and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(*2*) An order under this section may also be made by an Appellate Court, or by the High Court, when exercising its powers of revision.]

Moneys ordered to be paid recoverable as fines.

547. Any money (other than a fine) payable by virtue of any order made under this Code, [2][and the method of recovery of which is not otherwise expressly provided for] shall be recoverable as if it were a fine.

Copies of proceedings.

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record he, shall, on applying for such copy, be furnished therewith :

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Delivery to military authorities of persons liable to be tried by Court-martial.

44 & 45 Vict., c. 58 & 29 & 30 Vict., c. 109.

549. (*1*) The [3][Central Government] may make rules consistent with this Code and the [4][Army Act [5], the Naval Discipline Act and [6]* * * * the Indian Navy (Discipline) Act, 1934,] and the Air Force Act and] any similar law for the time being in force as to the cases in which persons subject to [7][military, [5][naval] or air force law], shall be tried by a Court to which this Code applies, or by Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable, [8][to be tried either by a Court to which this Code applies or by a Court-martial], such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding

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[1] Inserted by Act 18 of 1923, s. 153.

[2] Inserted by s. 154, *ibid.*

[3] Substituted by the A. O. 1937 for "G. G. in C.".

[4] Substituted by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I, for "Army Act, or".

[5] Inserted by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

[6] The words "that Act as modified by" were omitted by the A. O. 1950.

[7] Substituted by Act 10 of 1927, s. 2 and Sch. I, for "miliary law".

[8] Substituted by Act 35 of 1934, s. 2 and Sch., for "under the Army Act, section 41, or under the Air Force Act, section 41, to be tried by a Court-martial."

officer of the regiment, corps, [1][ship] or detachment, to which he belongs, or to the commanding officer of the nearest [2][military, [1][naval] or air-force station, as the case may be,] for the purpose of being tried by Court-martial.

Apprehension of such persons.

(*2*) Every Magistrate, shall, on receiving a written application for that purpose by the commanding officer of any body of [3][soldiers, sailors, or airmen] stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Powers to Police to seize property suspected to be stolen.

550. Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.

Powers of superior officers of police.

551. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station.

Power to compel restoration of abducted females.

552. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of [4][eighteen] years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Compensation to person groundlessly given in charge in presidency-town.

553. (*1*) Whenever any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(*2*) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

(*3*) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

Power of chartered High Courts to make rules for inspection of records of subordinate Courts.

554. (*1*) [5][With the previous sanction of the [6][State] Government, [7][any High Court [8][for a Part A State or a Part B State]] may, from time to time, make rules for the inspection of the records of subordinate Courts.

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[1] Inserted by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

[2] Substituted by Act 10 of 1927, s. 2 and Sch. I, for "military station".

[3] Substituted by Act 35 of 1934, s. 2 and Sch., for "troops".

[4] Substituted by the Indian Penal Code and the Code of Criminal Procedure (Amendment) Act, 1949 (42 of 1949), s. 5, for "Sixteen" which had been substituted by the Indian Criminal Law Amendment Act, 1924 (18 of 1924), s. 5, for "Fourteen".

[5] Substituted by the A. O. 1937 for "With the previous sanction of the G. G. in C., the High Court at Fort Williams, and with the previous sanction of the L. G., any other High Court".

[6] Substituted by the A. O. 1950 for "Provincial".

[7] Substituted, *ibid.*, for "any High Court within the meaning of the Government of India Act, 1935, other than the Chief Court of Oudh".

[8] Substituted by Act 1 of 1951, s. 22, for "for a Part A State".

[1][*(1A) With the previous sanction of the* [2][*State*] *Government, the High Court of Judicature at Bombay may also make rules for regulating the practice and proceedings of the Court of Session for Greater Bombay.*] *Power of High Court of Bombay to make rules for Court of Session for Greater Bombay.*

(2) Every High Court, [3][not being a High Court to which sub-section (1) applies] may, from time to time, and with the previous sanction of the [4][[State] Government],— **Power of other High Courts to make rules for other purposes.**

(a) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(c) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it; and

(d) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the [5][Official Gazette].

555. Subject to the power conferred by section [6][554], and by [7][article 227 of the Constitution] the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient. **Forms.**

[8][555A. (1) Every High Court may, from time to time, and with the previous approval of the State Government, make rules— **Power of High Court to make rules in respect of petition writers.**

(a) as to the persons who may be permitted to act as petition writers in the Criminal Courts subordinate to it;

(b) regulating the issue of licence to such persons, the conduct of business by them and the scale of fees to be charged by them; and

(c) providing a penalty for a contravention of any of the rules so made and determining the authority by which such contravention may be investigated and the penalties imposed:

Provided that the rules made under this section shall not be inconsistent with this Code or any other law in force for the time being.

(2) All rules made under this section shall be published in the *Official Gazette*.]

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[1] Inserted by Bom. 32 of 1948, s. 27.
[2] Substituted by the A. O. 1950 for "Provincial".
[3] Substituted by the A. O. 1948 for "not established by Royal Charter".
[4] Substituted by the A. O. for "L. G.".
[5] Substituted by the A. O. 1937 for "local official Gazette".
[6] Substituted by the Amending Act, 1903 (1 of 1903), for "553".
[7] Substituted by the A. O. 1950 for "section 224 of the Government of India Act, 1935"
[8] Inserted by Act 26 of 1955, s. 111.

Case in which Judge or Magistrate is personally interested.

556. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connction with the case.

Illustration.

A, as Collector, upon consideration of information furnished to him, directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.

Practising pleader not to sit as Magistrate in certain Courts.

557. No pleader who practises in the Court of any Magistrate in a presidency town or district, shall sit as a Magistrate, in such Court or in any Court within the jurisdiction of such Court.

Power to decide language of Courts.

558. The [1][[2][State] Government] may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than [3][a High Court for a Part A State] [4][or a Part B State].

Provision for powers of Judges and Magistrates being exercised by their successors in office.

[5][**559.** (*1*) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(*2*) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magsitrate in a Presidency-town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall, for the purpose of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(*2*) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a Presidency-town, and [6][*outside such towns, the Sessions Judge in the case of Judicial Magistrates and the District Magistrate in the case of Executive Magistrates,*] shall determine by order in writing the Magistrate who shall, for the purpose of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(*3*) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing

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[1] Substituted by the A. O. 1937 for "L. G.".
[2] Substituted by the A. O. 1950 for "Provincial".
[3] Substituted, *ibid*, for "the Courts which are High Courts for the purposes of the Government of India Act, 1935".
[4] Inserted by Act I of 1951, s. 23.
[5] Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 155, for the original s. 559.
[6] Substituted by Bom. 23 of 1951, s. 2 and Sch. Pt. I, for "the District Magistrate outside such towns".

the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge.]

560. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property. Officers concerned in sales not to purchase or bid for property.

561. (*1*) Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall— Special provisions with respect to offence of rape by a husband,

(*a*) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(*b*) commit the man for trial for the offence.

(*2*) And, notwithstanding anything in this Code, if a Chief Presidency Magistrate, or District Magistrate deems it necessary to direct an investigation by a police officer with respect to such an offence as is referred to in sub-section (*1*), no police officer of a rank below that of police-inspector shall be employed either to make, or to take part in the investigation.

561. (*1*) Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or [1][*a Magistrate of the first class*] shall— Special provisions with respect to offence of rape by a husband.

(*a*) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(*b*) commit the man for trial for the offence.

(*2*) And, notwithstanding anything, in this Code, if a Chief Presidency Magistrate or [1][*a Magistrate of the first class*] deems it necessary to direct an investigation by a police officer, with respect to such an offence as is referred to in sub-section (*1*), no police officer of a rank below that of police-inspector shall be employed either to make, or to take part in the investigation.

[2][**561A.** Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.] Saving of inherent power of High Court.

First Offenders.

[3][**562.** (*1*) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or [4][imprisonment for life], and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead Power of Court to release certain convicted offenders on probation of good conduct instead of sentencing to punishment.

[1] Substituted by Bom. 23 of 1951, s. 2, and Sch., Pt. I, for "District Magistrate".
[2] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923) s. 156.
[3] Substituted by Act 18 of 1923, s. 157, for original s. 562. This section has been rep. in U. P. by the U. P. First Offenders' Probation Act, 1938 (U. P. 6 of 1938), s. 15.
[4] Substituted by Act 26 of 1955, s. 112, for "transportation for life".

of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the mean-time to keep the peace and be of good behaviour :

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the State Government in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the [1][2][State] Government] in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class [3]* * * * * *, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.

Conviction and release with admonition.

[4][(*1A*) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code punishable with not more than two years' imprisonment and no previous conviction is proved against him, the Court before whom he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.] XLV of 1860.

(*2*) An order under this section may be made by any Appellate Court or by the High Court when exercising its power of revision.

(*3*) When an order has been made under this section in respect of any offender, the High Court may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law :

Provided that the High Court shall not under this sub-section inflict a greater punishment then might have been inflicted by the Court by which the offender was convicted.

(*4*) The provisions of sections 122, 126A and 406A shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.]

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[1] Substituted by the A. O. 1937 for "L. G. ".

[2] Substituted by the A. O. 1950 for "Provincial".

[3] The words "or Sub-divisional Magistrate" were deleted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

[4] Inserted by the Code of Criminal Procedure (Second Amendment) Act, 1923 (37 of 1923), s. 4.

Provision in case of offender failing to observe conditions of his recognizances.

[1]563. (*1*) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(*2*) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence.

Conditions as to abode of offender.

[1]564. (*1*) The Court, before directing the release of an offender under section 562, [2][sub-section (*1*)], shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(*2*) Nothing in this section or in sections 562 and 563 shall affect th provisions of section 31 of the Reformatory Schools Act, 1897.

VIII of 1897.

Previously convicted offenders.

Order for notifying address of previously convicted offender.

565. (*1*) When any person having been convicted—

(*a*) by a Court in India of an offence punishable under section 215, section 489A, section 489B, section 489C, or section 489D of the Indian Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment of either description for a term of three years or upwards, or

XLV of 1860.

(*b*) before the 26th day of January, 1950, by a Court or Tribunal in any Indian State acting under the general or special authority of the Central Government or of the Crown

[565. (*1*) When any person having been convicted—

Order for notifying address of previously convicted offender.

(*a*) by a Court in [4][India] of an offence punishable under section 215, section 489A, section 489B, section 489C, or section 489D of the Indian Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment of either description for a term of three years or upwards, or

XLV of 1860.

(*b*) [5][before the 26th day of January, 1950, by a Court or Tribunal] in [6][any Indian State acting under the general or special authority of the Central Government or of the

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[1] Ss. 563 and 564 have been rep. in U. P. by the U. P. First Offenders' Probation Act, 1938 (U. P. 6 of 1938), s. 15.

[2] Inserted by the Repealing and Amending Act, 1924 (7 of 1924), s. 2 and Sch. I.

[3] Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 158, for the original s. 565.

[4] The words "British India" have successively been substituted by the A. O. 1948, A. O. 1950 and Act I of 1951 to read as above.

[5] Substituted by the A. O. 1950 for "by a Court or Tribunal".

[6] Substituted by the A. O. 1937 for "the territories of any Prince or State in India acting under the general or special authority of the G. G. in C., of any L. G.".

Representative, of any offence which would, if committed in India, have been punishable under any of the aforesaid sections or Chapters of the Indian Penal Code with like imprisonment for a like term, XLV of 1860.

is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by a High Court, Court of Session, Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of imprisonment on such person, also order that his residence and any change of or absence from such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

Crown Representative], of any offence which would, if committed in [1][India], have been punishable under any of the aforesaid sections or Chapter of the Indian Penal Code with like imprisonment for a like term, XLV of 1860.

is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by a High Court, Court of Session, Presidency Magistrate [2]* * * * * or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of [3]* imprisonment on such person, also order that his residence and any change of or absence from such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(*2*) If such conviction is set aside on appeal or otherwise, such order shall become void.

(*3*) The [4][[5][State] Government] may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

(*4*) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

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[1] The words "British India" have successively been substituted by the A. O. 1948, A. O. 1950 and Act I of 1951 to read as above.

[2] The words "District Magistrate, Sub-divisional Magistrate" were deleted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

[3] The words "transportation or" were deleted by Act 26 of 1955, s. 113.

[4] Substituted by the A. O. 1937 for "L. G.".

[5] Substituted by the A. O. 1950 for "Provincial".

[1]* * * * * * * *

[2][(5) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.]

SCHEDULE I.—[*Enactments repealed.*] *Rep. by the Repealing and Amending Act, 1914 (X of 1914), s. 3 and Sch. II.*

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[1] Sub-section (5) rep. by the Criminal Law (Amendment) Act, 1939 (22 of 1939), s. 3.
[2] The former sub-section (6) was re-numbered (5), *ibid.*, s. 3.